

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

OKANG PALMER,

Defendant and Appellant.

B286794

(Los Angeles County
Super. Ct. No. NA101746)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Jesus I. Rodriguez, Judge. Affirmed.

Vanessa Place, under appointment by the Court of Appeal,
for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Scott A. Taryle and Colleen M. Tiedemann,
Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Appellant Okang Palmer was charged with multiple counts arising from his alleged enticement of Alyssia C.¹ to move to Los Angeles to work for him as a prostitute; she did so, living with him for a year and giving him all of the money she made. Then, over the course of several days in February 2015, he beat her severely, resulting in hospitalization and lasting injuries. Appellant was convicted by jury of assault with a deadly weapon, criminal threats, human trafficking, and pandering.

Appellant raises several challenges on appeal. First, he contends the trial court erred in denying his motion to discharge his retained counsel mid-trial. Second, he challenges the admission of testimony by the prosecution's expert in response to a hypothetical mirroring the facts of the case. Third, he argues that insufficient evidence supported the jury's finding that he committed great bodily injury against Alyssia during the commission of the acts underlying the human trafficking and pandering counts. We find no error and affirm.

FACTUAL AND PROCEDURAL HISTORY

A. Procedural Background

An information charged appellant with the following counts: assault with a deadly weapon, a belt buckle (Pen. Code § 245, subd. (a)(1); count one);² assault with a deadly weapon, an e-cigarette device (§ 245, subd. (a)(1); count two); criminal threats

¹Pursuant to California Rules of Court, rule 8.90 (b)(4), we refer to Alyssia by first name to protect her privacy. No disrespect is intended.

²All further statutory references herein are to the Penal Code unless otherwise indicated.

(§ 422, subd.(a); count three); kidnapping (§ 207, subd. (a); count four); human trafficking to commit another crime (§ 236.1, subd. (b); count five); and pandering by encouraging (§ 266i, subd. (a)(2); count six). The information alleged that appellant committed counts one through four on or between February 18 and 19, 2015, and counts five and six on or between December 1, 2014 and February 19, 2015. The information further alleged as to all counts that appellant personally inflicted great bodily injury upon the victim, Alyssia, under circumstances involving domestic violence (§ 12022.7, subd. (e)).

Trial commenced in October 2017. At the conclusion of trial, the jury found defendant guilty of counts one, three, five, and six, and found the great bodily injury allegation true as to each of these counts. The jury deadlocked on counts two and four, and the court declared a mistrial as to those counts.

The trial court sentenced appellant to a total term of 25 years in state prison, as follows: the upper term of 20 years on count five, plus five years for the great bodily injury enhancement; concurrent sentences on counts one and three; and a stayed sentence on count six pursuant to section 654. Appellant timely appealed.

B. *Prosecution Case*

1. *Alyssia*

Alyssia testified that she was nineteen years old when she met appellant in February 2014. She met appellant online through Redbook, an on-line prostitution service. She was working as a prostitute in Oakland at the time. She told appellant she was a prostitute, and communicated with him by text and phone for about three weeks. Appellant told her that if she came to Los Angeles, she would be “taken care of . . . a safe

family that I never had. Basically telling me everything that I wanted to hear.” Alyssia decided to go to Los Angeles because she thought it was an “escape route.” She understood that she would be working for appellant and also expected to have a personal relationship with him. Around the end of February 2014, she took a train from Oakland to Los Angeles. Appellant met her when she arrived.

After picking her up, appellant took her to buy clothes, which she described as “little to nothing” lingerie and some clothing “to work in if I was going to be on the street.” He paid for the clothing. Next they went to appellant’s house in Harbor City. There, they discussed the prices for Alyssia’s services. The prices were determined by appellant. Appellant also took photos of Alyssia in the lingerie, to post online as ads for sexual services. While he was taking the photos, appellant directed her to show certain parts of her body, “all of the things that will sell.” The photos were “immediately posted on-line” by appellant; he also went over the rules for Alyssia to follow while working. Alyssia testified that she felt she “had gotten played, like I was sold a dream.” She did not leave because she was intimidated, did not know anyone else in Los Angeles, and had no resources.

That same night, appellant showed Alyssia a location near his home known as a “track,” or a spot where prostitutes met customers. She began to work the track that night or the following day. She gave all of the money she made to appellant. She was also living with appellant. She worked several tracks off and on the entire time she was with appellant, about a year. At times, when business at the track was slow, she would also work in strip clubs in Los Angeles and Sacramento. Sometimes she

also worked in a hotel, where customers would come to her room. During this period, she was using her middle name, Nikki.

If Alyssia expressed a desire not to work or told appellant she felt uncomfortable, “I would actually work more or I would get beat or in trouble for asking not to work.” Appellant paid for her food, personal items, and other needs. Alyssia also had a “brand”—a tattoo of appellant’s name on her hip. She testified that appellant told her to get the tattoo to prove “that I am his property, basically.” He paid for the tattoo.

After Alyssia moved to Los Angeles, one of her prior customers bought her a car. Appellant drove her to San Jose to get it and she drove it back to Los Angeles.

At some point, Alyssia went to Hawaii for about a month to work. Appellant paid for everything. After she returned to Harbor City, around February 2015, she was not making as much money as she had before and her relationship with appellant went “down the drain.” Appellant began hitting Alyssia regularly because she was not making enough money.

One night in February 2015, Alyssia worked at a strip club until about 1:00 a.m., smoked marijuana, and then fell asleep in the car. As a result, she arrived home “extremely late.” When she got to appellant’s home, he walked out to meet her and said the car smelled like “sex and weed.” He told Alyssia to go into the house, into the bedroom they shared. Appellant’s four-year-old daughter, E., was sitting in the living room at the time. Alyssia went to the bedroom, where appellant accused her of betraying him and began to attack and beat her. He beat her with his fists and a belt until she lost consciousness. He also hit her in the forehead multiple times with the metal buckle of the belt, breaking the buckle and splitting open her forehead. He

told her she was “going to be killed and that my body was going to be dumped in the river and that he would get away with it.” Appellant also beat and burned her with a vapor pen. She had two black eyes and a broken nose, from appellant punching her “repeatedly in the face.”

After she lost consciousness, Alyssia recalled being dragged to a car. She woke up in the car, in the front passenger seat, with appellant driving and E. in the back seat. Appellant continued beating her with his fist and the vapor pen. At some point, they arrived at an unfamiliar house in Stockton, in Northern California; appellant and his cousin moved her from the car to a back house. There, appellant broke a vase over her head and stomped on her repeatedly. She blacked out again, but remembered hearing appellant’s cousin telling him to take her to the hospital, and appellant telling her, “I can’t believe you done this to me. Why would you do this to me?” He also told Alyssia he was taking her to the hospital and then carried her to the car. Appellant told her to lie at the hospital and “tell them that some girls jumped you at the strip club.” He said there would be people waiting for her when she was released from the hospital.

Appellant drove her to a nearby hospital in Stanislaus County and then left. Alyssia told the doctors that she had been “jumped coming out of a strip club by multiple girls and they used bats and heels and basically robbed me.” She repeated the same story when questioned by police officers at the hospital. She testified that she did not tell the truth at the hospital because she did not feel safe and knew what appellant “was capable of.” Appellant’s family members called her while she was in the hospital.

When she was released from the hospital a day or so later, appellant and a female family member picked her up. They drove to a hotel. Alyssia testified that she was on medication and “pretty much incoherent.” Appellant sexually assaulted her and beat her again. Then he took her to his sister’s home. Alyssia was not sure how long she was there, but said that appellant became angry and dragged her into the kitchen, where he pulled out a kitchen knife and threatened to kill her and then himself if she did not give him the car keys (which she did not have). She then saw appellant “drop down.” She did not know whether he had passed out or was “playing dead,” but she took that opportunity to run out of the house. She ran down the street screaming for help. A car stopped for her and the couple took her to the police station. The station was closed and she did not have a phone, but the couple let her use their phone to call 911.

In the 911 call, which the prosecutor played at trial, Alyssia referred to appellant as her ex-boyfriend. She told the 911 operator that she “just got beat up” by appellant and he was “trying to kill himself in front of me.” One of the witnesses also spoke on the call, telling the operator that Alyssia was “running out of a house,” ran up to her car and asked for a ride.

The prosecution showed the jury numerous photos of Alyssia’s injuries, including circular burn marks on her forehead and body, stitches on her nose, and bruises over much of her body. Her right hand was also broken; she testified that occurred when she tried to defend herself from appellant in the car.

2. Investigating officers

Deputy Andrew Glover with the Stanislaus County Sheriff’s Department testified that he responded to Alyssia’s 911 call on February 21, 2015, around 8:15 p.m. He met Alyssia

outside the closed police substation and immediately noticed she had two black eyes and “what appeared to be burn marks on her face.” Alyssia told him about the incidents with appellant, starting in Harbor City (in Southern California) a few days prior. She referred to appellant as her ex-boyfriend and pimp. Alyssia admitted to Glover that she lied to police officers at the hospital about being assaulted by other girls. Glover photographed her injuries, contacted the Los Angeles Police Department (LAPD), and transported her to a medical center.

LAPD officer Andrew Gonzalez testified as the investigating officer. He spoke with Alyssia by phone on February 23 and 24, 2015, while she was staying at a women’s shelter in Northern California. Gonzalez and his partner, Officer Kimberly Felix, met with Alyssia at the shelter on February 25, 2015. Gonzalez testified that Alyssia was limping and appeared to be in pain. He also described the extensive injuries to her face and body, including black eyes, burn marks, bruising, and stitches on her nose, and her right arm in a cast. They drove Alyssia back to Los Angeles.

Gonzalez and Felix executed search warrants and retrieved numerous photos from appellant’s Instagram account (including photos of appellant and Alyssia), as well as ads from prostitution websites. Gonzalez testified that, in his opinion, those photos substantiated Alyssia’s claim that she was working for appellant as a prostitute.

LAPD officers located and arrested appellant on May 7, 2015.

3. *E.*

The prosecutor also played a recorded interview of E., conducted in May 2015. During the interview, E. discussed her

father's girlfriend, who she referred to as "Mickey."³ E. stated that "Mickey always gets whooped," and she did not like it when her dad "give [sic] Mickey whoopings." E. also discussed an incident in the apartment where she heard a sound, then "Mickey" came out of her room and "she had an owie on her forehead, a big one," and then "my daddy pushed her, and she kept telling lies in the car." E. saw "blood on her owie," which made her "kind of sad," and then "my daddy said, You're going to die soon, [to Mickey] because she keeps getting hurt." E. also described riding in the car, with appellant driving and "whooping Mickey. Mickey is telling lies because Mickey was having sex with the wrong mans. So she just keep get punched, get punched get punched, get punched, and hurt, and hurt . . . every single time."

E. also testified at trial; she was seven years old at the time. She confirmed that there had been a woman named Nikki living with her and her father, but denied ever seeing Nikki with any cuts or injuries. She testified that she did not remember any of the things she had discussed in her 2015 interview.

4. *Prosecution expert*

Officer Felix, who worked in the LAPD human trafficking unit, testified as the prosecution's expert. ~(5 RT 1525)~ She detailed the typical grooming and recruitment process pimps use with prostitutes, followed by the introduction of prostitution and violence once a pimp has isolated the target. She discussed "branding," meaning the pimp's requirement that the prostitute get a tattoo, often of his name, "so you know that this is who this person belongs to, in the pimp prostitute world." The prosecutor

³At trial, E. confirmed that "Mickey" was Alyssia, whom she knew as "Nikki."

also posed a lengthy hypothetical, based on the facts of the case, encompassing initial contact by the man on a prostitution website, the promises made to the woman, her relocation, their relationship and her work as a prostitute, escalating violence, a trip to the hospital, and ending with the woman fleeing. She asked Felix her opinion “as to whether these facts are consistent with human trafficking?” Felix responded, “Absolutely. That’s a painted picture of what human trafficking actually is.” She also discussed particular details from the hypothetical that supported her opinion. Felix also identified a hand gesture made by appellant in several social media photographs as a “pimp sign” used by pimps to identify other pimps.

C. *Defense Case*

Three of appellant’s family members testified in his defense. His cousin, Demarco Ham, testified that he knew “Nikki” as appellant’s girlfriend and had seen her a few times at family outings. On February 17 or 18, 2015, Ham received a call from the Stockton police, who were with Alyssia in the hospital. The police gave the phone to Alyssia to speak with him. Ham testified that Alyssia told him she was in the hospital and had been jumped at a strip club. She was trying to reach appellant and needed someone to pick her up. Ham also testified that he spoke to Alyssia one other time, about two or three weeks later. He did not testify about the content of this second conversation.

During cross-examination, Ham claimed that he told defense counsel about his 2015 conversation with Alyssia from the hospital sometime in either 2015 or 2016.⁴

⁴As discussed further *post*, after Ham’s testimony concluded, the parties stipulated that Ham first told defense

Another cousin, Eva Magnum, testified that in February 2015, appellant called and asked her to pick Alyssia up from the hospital, until he could get a ride from Los Angeles. She knew Alyssia as appellant's girlfriend. Magnum picked Alyssia up and planned to bring her to Magnum's house. However, once she saw Alyssia's condition, Magnum did not want to have Alyssia around her young children, so she told Alyssia "I would just rent her a room and [appellant] can get her from there." Magnum testified that she asked what happened and Alyssia said "some girls jumped her" at a club. She took Alyssia to fill her prescriptions, then rented her a room at a nearby motel, and left Alyssia there. Magnum testified that she first reported this information to defense counsel in October 2017, "when I was asked about it."

Appellant's sister, Esther Phillips-Wilson, also testified that she knew Alyssia as appellant's girlfriend. Alyssia visited Phillips-Wilson's house more than five times. In February 2015, Alyssia came to the house and looked like she had been beaten up. Alyssia said she "got jumped at a night club in Stockton." Alyssia stayed in Phillips-Wilson's house for a day or two. Phillips-Wilson claimed she did not know exactly when or how Alyssia left her home. She testified that she first told defense counsel about her interaction with Alyssia in October 2017; that was the first time she was "contacted to give any information."

DISCUSSION

A. Appellant's Request to Discharge His Counsel

Appellant contends the trial court erred in denying his request to discharge his counsel during trial. We conclude the

counsel about this 2015 conversation with Alyssia in October 2017.

court's ruling was not an abuse of discretion, given the timing of the request and the circumstances of the case.

1. *Background*

a. *Pre-trial disclosure of defense witnesses*

Just before jury selection, the prosecutor moved to exclude three defense witnesses—Ham, Magnum, and Phillips-Wilson. She objected that because defense counsel had only disclosed the witnesses the afternoon before, the disclosure was untimely. Defense counsel, David Nisson, stated that he had only “found out about these [witnesses] over the lunch hour yesterday.” He met with appellant, who “reminded” Nisson that he had the contact numbers for these witnesses, “so I called the people yesterday over the lunch hour and realized that they had some relevant testimony.”

The court responded that it was hard to believe that defense counsel, who had been working on the case for over two years, just discovered the names of these witnesses, all of whom were appellant's relatives. Nisson elaborated that appellant had given him the witness contact information earlier, but Nisson had not written any notes regarding their relevance, nor did he contact them until appellant mentioned it again. Nisson continued, “And if the court were to deny this because it is untimely or too late--I mean, obviously, I am falling on ineffective assistance of counsel.” The court indicated it felt this was “a trial tactic,” noting that in “twenty plus years” of experience with Nisson professionally, “I have never come even close to any determination or insinuation that you are incompetent.” Ultimately, the court ruled that all three witnesses would be allowed to testify.

b. *Ham's testimony and resulting stipulation*

Ham was the first of the three defense witnesses to testify. During his cross-examination, the prosecutor asked him why he did not tell anyone in 2015 that he had spoken with Alyssia while she was in the hospital. Ham responded that in “July” he told “the defense attorney everything that I told you all. He knows everything.” Upon further questioning by the court, Ham stated that he told Nisson around the time Nisson was hired in 2015 that “I was willing to come testify on my cousin’s behalf because of the statements. . . .”

The prosecutor requested a sidebar, which the court granted. She explained the issue to the court—either the witness was lying about telling Nisson in 2015 that he had spoken with Alyssia, or Nisson had misrepresented the fact that he did not speak to Ham until right before trial. Further, the prosecutor said she could not prove Ham was lying without calling Nisson as a witness. Nisson continued to insist that he learned the substance of Ham’s testimony for the first time right before trial, in October 2017. The court responded to Nisson, “either he is lying or you are.” Nisson clarified that he had spoken with Ham several times over the years, and “never intended to convey to the court that I never spoke to [him],” but “I have never understood that he had this call from the hospital [with Alyssia] until October 2nd[, 2017].”

The court stated that Nisson’s claim was “nonsense. You know it and I know it.” Nisson reiterated that he did not recall having any discussion about the hospital call before, and said, “Let me tell you guys, I am not a liar. I don’t make stuff up here.” Nisson also noted that Ham might have mentioned this

information “before I was hired,” but he would not have remembered it because he did not take notes.

The court indicated it was inclined to strike Ham’s testimony. The court reasoned that the testimony was “superfluous” and “nothing new” from what the prosecution’s own witnesses had said, and that because Nisson could not be called as a witness, Ham’s testimony should be stricken. The court also told Nisson it was “making a finding that you violated discovery rules on purpose.” Nisson responded that he did not think Ham was lying, but insisted that he did not recall a prior conversation on this topic.

The court excused Ham and the jury and held an Evidence Code section 402 hearing, questioning the other two defense witnesses regarding when they made statements to Nisson. Both Magnum and Phillips-Wilson stated that they first spoke with Nisson in 2017, just before trial began.

The court then asked counsel, “[H]ow do we remedy [this issue] short of striking the entire testimony of Mr. Ham?” The prosecutor stated her preference for a stipulation to the fact that Ham first mentioned the hospital call in October 2017; Nisson agreed. The court noted, “that’s not the testimony of Mr. Ham,” but ultimately accepted the stipulation. After both parties indicated they would not question Ham further, he was excused as a witness.

The next court day, the court read the following stipulation to the jury: “the first time [Mr.] Demarco Ham informed defense that he had a conversation with Alyssia C. while she was in the hospital was on October the 2nd, 2017. And the first time Demarco Ham ever mentioned that he had a conversation with Alyssia C., two[-]three weeks after he spoke to her on the phone

in the hospital was when [he] took the stand and testified on October 6, 2017.”

c. *Appellant’s request to discharge his attorney*

Immediately after the court read the stipulation, appellant asked to tell the jury something. The court sent the jurors out of the courtroom and admonished appellant that he could not speak to the jury without testifying. Appellant then requested a “*Marsden* hearing.”⁵ The court asked him, “you want to fire your lawyer?” Appellant responded, “All I know, this is not the truth,” and confirmed he wanted to fire Nisson.

The court excused the prosecutor and asked appellant whether he wanted to relieve his attorney. Appellant responded that Nisson “was unprepared for this whole case,” including during the Evidence Code section 402 hearing, and that he had not “done the research or any investigation . . . every time I call him, he says he’s not gotten to my case yet, he was going to get around to it.” Nisson responded that he had “done everything that I felt was necessary to prepare for this case.” The court further inquired of Nisson: “Are you able to continue to represent your client to the best of your ability? . . . Forcefully within the bounds of the law?” Nisson responded affirmatively. The court denied the motion to relieve appellant’s counsel.

d. *Resumption of trial*

Trial proceeded with the prosecution’s remaining witness, Felix, and then Magnum and Phillips-Wilson for the defense. In his closing argument, Nisson discussed the stipulation, noting the discrepancy between the dates and that the prosecutor might argue that the jury should not believe Ham. He argued that the

⁵*People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

import of Ham’s testimony was the substance of what Alyssia told Ham, rather than the date of disclosure.

2. *Legal standards*

“A defendant has a constitutional and statutory right to counsel of his choice. [Citations.]” (*People v. Stevens* (1984) 156 Cal.App.3d 1119, 1127 (*Stevens*.) His or her interest in discharging a retained attorney is included within the right to counsel of one’s choice, and is subject to the same limitations. (*Ibid.*)

Generally, where a defendant has retained counsel of his or her choice, the attorney may be discharged at any time with or without cause. (*People v. Ortiz* (1990) 51 Cal.3d 975, 983 (*Ortiz*.) “Though entitlement to representation by a particular attorney is not absolute [citation], “the state should keep to a necessary minimum its interference with the individual’s desire to defend himself in whatever manner he deems best, using any legitimate means within his resources—and . . . that desire can constitutionally be forced to yield only when it will result in significant prejudice to the defendant himself or in a disruption of the orderly processes of justice unreasonable under the circumstances of the particular case.” [Citation.]” (*Stevens, supra*, 156 Cal.App.3d at p. 1127, quoting *People v. Gzikowski* (1982) 32 Cal.3d 580, 586–587.) Thus, a court faced with a request to substitute retained counsel must balance the defendant’s interest in obtaining new counsel against the disruption, if any, flowing from the substitution. (*People v. Turner* (1992) 7 Cal.App.4th 913, 918–919.)

A request to substitute retained counsel does not require the court to conduct a hearing under *Marsden*. As our Supreme Court put it, “[w]hile we do require an *indigent* criminal

defendant who is seeking to substitute one *appointed* attorney for another to demonstrate either that the first appointed attorney is providing inadequate representation [citations], or that he and the attorney are embroiled in irreconcilable conflict [citation], we have never required a *nonindigent* criminal defendant to make such a showing in order to discharge his *retained* counsel.” (*Ortiz, supra*, 51 Cal.3d at p. 984.)

We review the trial court’s denial of a request to discharge retained counsel for an abuse of discretion. (*Ortiz, supra*, 51 Cal.3d at p. 983.) However, if we find error, “reversal is automatic when a defendant has been deprived of his right to discharge retained counsel and defend with counsel of his choice.” (*Id.* at p. 988.)

3. *Analysis*

Appellant first argues that the trial court erred in treating his motion to discharge his retained counsel as a *Marsden* motion, applicable to appointed counsel. We find nothing in the record suggesting that the court applied the incorrect standard. Although appellant referenced *Marsden* in seeking to discharge his counsel, his attorney noted that he was retained. The trial court did not indicate it was proceeding under *Marsden*, instead asking appellant whether he wanted to fire his lawyer. Similarly, the court did not make any findings under *Marsden* regarding whether appellant’s counsel was providing inadequate representation, or whether appellant was embroiled in an irreconcilable conflict with defense counsel. (*Marsden, supra*, 2 Cal.3d at pp. 124–125.) Nor did the court conduct the “active inquiry” into any purported incompetence or conflict required under *Marsden*. (See *People v. Stewart* (1985) 171 Cal.App.3d 388, 398, disapproved on other grounds by *People v. Smith* (1993)

6 Cal.4th 684, 694.) As such, we decline to find that the trial court improperly held appellant to the *Marsden* standard in ruling on his motion to discharge his counsel. (Compare *People v. Lara* (2001) 86 Cal.App.4th 139, 148 [finding error where court expressly denied “*Marsden*” motion regarding retained counsel]; *Ortiz, supra*, 51 Cal.3d at p. 980 [error where court denied request to discharge retained counsel “on the ground that defendant had not demonstrated his attorneys’ incompetence”].)

Appellant further contends that, even under the correct standard, the court failed to appropriately weigh the relevant factors, particularly the conflict that had developed as a result of Ham’s testimony. He suggests that by entering into the stipulation, Nisson chose “his own veracity over that of his client’s witness” and, consequently, appellant’s need for counsel without such a conflict should have outweighed any disruption. He also notes that, to the extent his request was “untimely,” he was not at fault, as he moved to discharge his counsel as soon as the stipulation was read.

We are not persuaded that the court abused its discretion in weighing the appropriate considerations and denying appellant’s request. Regardless of fault, the request was untimely, as it was made in the middle of trial—the parties had already examined multiple witnesses, with only three remaining, over the course of several days. “This meant that the request could not be granted without causing a significant disruption, i.e., a continuance with the attendant further inconvenience to witnesses and other participants. The question then became whether such a disruption was reasonable under the circumstances.” (*People v. Turner, supra*, 7 Cal.App.4th at p. 919; see also *People v. Lau* (1986) 177 Cal.App.3d 473, 478–479 [no

error in denial where defendant made request at start of jury selection and court considered defendant's concerns and his counsel's assurances of adequate representation].) The court did not err in implicitly holding that such a disruption was unwarranted.

We also disagree with appellant's assessment of the import of the conflict created by the stipulation. Although the stipulation expressly contradicted one facet of Ham's testimony—the date he told defense counsel about the conversation he had with Alyssia—it did not challenge the substance of Ham's statements regarding his interaction with Alyssia. Moreover, Alyssia told multiple people at the time of her hospitalization that she had been jumped by girls at a club, as indicated in the testimony of the other two defense witnesses, the testifying officers, and Alyssia herself. Appellant suggests that although Magnum and Phillips-Wilson were not included in the stipulation, they were also “tainted,” as the prosecutor questioned why they had not disclosed information to defense counsel earlier. But both witnesses testified that they had not been contacted prior to 2017. Thus, the court did not abuse its discretion in determining that Ham's testimony was duplicative and that the stipulation's effect on his credibility, if any, did not outweigh the disruption inherent in discharging counsel mid-trial.

Further, although Nisson insisted repeatedly that he was not lying and had made his representations to the court and to the prosecutor in good faith, he also acknowledged that Ham might have told him about the conversation earlier than 2017 and he simply did not recall it. Faced with the choice of entering into the stipulation or having the entirety of Ham's testimony

stricken, his decision to proceed with the former under the circumstances did not create a conflict outweighing all other considerations. The court's denial of appellant's request to discharge his counsel was therefore not an abuse of discretion.

B. *Expert's Response to Hypothetical Question*

Appellant argues that the court erred by allowing the prosecutor to use an improper hypothetical question to elicit expert testimony from Felix. Specifically, he contends that the "improperly elaborate" hypothetical, which encompassed most of the facts of the case, allowed Felix to "vouch[] for Alyssia's credibility, and the truth of her allegations of abuse." We find no error.

In general, "[a] trial court's exercise of discretion in admitting or excluding evidence is reviewable for abuse [citation] and will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Brown* (2003) 31 Cal.4th 518, 534.)

As an initial matter, appellant's failure to object to the hypothetical question at trial forfeits his claim. (See *People v. Stevens* (2015) 62 Cal.4th 325, 333 ["the failure to object to the admission of expert testimony or hearsay at trial forfeits an appellate claim that such evidence was improperly admitted"].) Appellant counters that an objection would have been futile because such hypothetical questions based on the facts of the case "are generally approved." However, to the extent he contends this particular hypothetical was improper, he has made no showing of futility.

Moreover, even if we considered the substance of appellant's claim, we would find no abuse of discretion by the

trial court. As appellant recognizes, “[g]enerally, an expert may render opinion testimony on the basis of facts given “in a hypothetical question that asks the expert to assume their truth.”” (*People v. Gonzalez* (2006) 38 Cal.4th 932, 946.)

Likewise, an expert may express opinions based on hypothetical questions that track the evidence in the case. (*People v. Vang* (2011) 52 Cal.4th 1038, 1048 (*Vang*).)

By contrast, an expert may not opine directly on a defendant’s guilt of the charged crimes. (*Vang, supra*, 52 Cal.4th at p. 1048.) “The reason for this rule is not because guilt is the ultimate issue of fact for the jury, as opinion testimony often goes to the ultimate issue. [Citations.] “Rather, opinions on guilt or innocence are inadmissible because they are of no assistance to the trier of fact. To put it another way, the trier of fact is as competent as the witness to weigh the evidence and draw a conclusion on the issue of guilt.”” (*Ibid.*) Thus, for example, courts have concluded that expert testimony is inadmissible where the expert offers an opinion “as to what type of pimp Mr. X or [the defendant] is” (*People v. Leonard* (2014) 228 Cal.App.4th 465, 492–493), as to whether he or she observed “patterns of behavior in pimping in manipulation and control of women in the testimony you heard today” (*id.* at p. 492), and as to whether there was evidence in a case to contradict a victim’s testimony that she was “‘assaulted by someone by the name of James Spence”” (*People v. Spence* (2012) 212 Cal.App.4th 478, 488, 508–509).

Here, appellant has not demonstrated any error in Felix’s testimony. Felix was not asked to opine as to Alyssia’s credibility or as to whether appellant committed any of the conduct alleged. Instead, she was asked to assume the truth of a series of facts

and then to offer an opinion whether that fact pattern was consistent with human trafficking. That was permissible expert testimony.

Appellant's citation to a series of child abuse cases is inapposite. Those cases deal with the specific exclusion of expert testimony using evidence of child sexual abuse accommodation syndrome as a "*predictor* of child abuse," in other words, "that where a child meets certain criteria, we can predict with a reasonable degree of certainty that he or she has been abused." (*People v. Bowker* (1988) 203 Cal.App.3d 385, 393; see also *People v. Gilbert* (1992) 5 Cal.App.4th 1372, 1383; *People v. Roscoe* (1985) 168 Cal.App.3d 1093, 1099 [expert may not base "his opinion as to credibility on his diagnosis of *this* witness"].) Nothing of the type occurred in this case.

C. Great Bodily Injury Enhancement

Appellant challenges the great bodily injury enhancements on counts five (human trafficking) and six (pandering), arguing there was insufficient evidence to allow the jury to find that the injury occurred "during the commission of" the acts charged.⁶ We disagree.

We review claims challenging the sufficiency of the evidence to uphold a judgment under the substantial evidence standard. Under that standard, we review "the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find [the elements

⁶The jury found the great bodily injury allegation true as to all four counts on which it convicted appellant; however, appellant challenges this finding only as to the counts for human trafficking (count five) and pandering (count six).

of the crime] beyond a reasonable doubt.” (*People v. Bolden* (2002) 29 Cal.4th 515, 553, quoting *People v. Kipp* (2001) 26 Cal.4th 1100, 1128.) ““If the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.”” (*People v. Bean* (1988) 46 Cal.3d 919, 933, quoting *People v. Hillery* (1965) 62 Cal.2d 692, 702.)

Section 12022.7, subdivision (e) imposes a sentencing enhancement when a defendant “personally inflicts great bodily injury under circumstances involving domestic violence in the commission of a felony or attempted felony.”

Human trafficking under section 236.1, subdivision (b) occurs when a defendant “deprives or violates the personal liberty of another with the intent to effect or maintain a violation of” enumerated criminal statutes, including those for pimping and pandering. “Deprivation or violation of the personal liberty of another’ includes substantial and sustained restriction of another’s liberty accomplished through force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim . . . , under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out.” (§ 236.1, subd. (h)(3).) Pandering under section 266i occurs when a defendant “By promises, threats, violence, or by any device or scheme, causes, induces, persuades, or encourages another person to become a prostitute.” Pandering is a continuous, ongoing offense. (See *People v. Leonard* (2014) 228 Cal.App.4th 465, 490 [“the charged pandering is completed once the victim is encouraged to become a prostitute (citation), and it continues as

long as the intended prostitution continues”]; see also *People v. Diedrich* (1982) 31 Cal.3d 263, 282.)

Appellant contends there was insufficient evidence that the injuries he inflicted on Alyssia between February 18 and 19, 2015 occurred “in the commission” of any human trafficking or pandering, as required for an enhancement under section 12022.7. In general, courts have broadly construed the phrase “in the commission” for purposes of sentencing enhancements under section 12022.7 and similar statutes. For example, in *People v. Jones* (2001) 25 Cal.4th 98, 108 (*Jones*), our Supreme Court considered whether the defendant’s use of a knife immediately following a rape was sufficiently “in the commission” of the rape to support a weapon enhancement under sections 12022.3, subdivision (a), and 667.61, subdivision (e)(4). The court concluded that the enhancement could apply even if the weapon was used after the sex act was technically completed. (*Id.* at p. 109.) As the court explained, whether the defendant used the knife in the commission of the sex offenses was “not ‘a matter of semantics or simple chronology.’” Instead, ‘the focus is on the relationship between the [sex offenses] and the [use of the weapon].’ [Citation.]” (*Ibid.*) As such, “the dispositive question is whether the relationship between the [sex offenses] and [the use of the weapon] was sufficiently close to justify an enhanced punishment,” and such use “may be deemed to occur ‘in the commission of’ the offense if it occurred before, during, or after the technical completion of the felonious . . . act.” (*Id.* at pp. 109-110.) Similarly, in *People v. Elder* (2014) 227 Cal.App.4th 411, 423, the court applied the reasoning from *Jones* to uphold a great bodily injury enhancement under section 12022.7, where the

victim broke his finger during a struggle to escape from defendant following an assault.

Here, the jury convicted appellant of human trafficking and pandering between December 1, 2014 and February 19, 2015. During that time period, Alyssia testified that appellant would beat her if she complained about her working conditions. She also stated that the situation worsened in February 2015, culminating in the extensive injuries she sustained between February 18 and 19, 2015, after appellant accused her of cheating on him and talking to other pimps. The prosecution's expert, Officer Felix, testified that pimps often use violence to punish a prostitute for breaking the rules or talking to another pimp and to establish control over a prostitute. Thus, there was sufficient evidence for a jury to find that appellant's violence against Alyssia, resulting in her severe injuries, facilitated his ability to control her, isolate her, and keep her working as a prostitute for him. As such, the jury could reasonably find that appellant committed great bodily injury in the commission of the human trafficking and pandering offenses.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

MANELLA, P. J.

DUNNING, J. *

* Retired Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.